

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Criminal No. 13-129 (DWF/FLN)

Plaintiff,

v.

**REPORT AND
RECOMMENDATION**

Frantz Pierre,

Defendant.

Karen Schommer, Assistant United States Attorney, for Plaintiff.
Roger Owens Jr., for Defendant Pierre.

THIS MATTER came before the undersigned United States Magistrate Judge on October 9, 2013 on Defendant Pierre's motion to dismiss [ECF No. 65]. The matter was referred to the undersigned for a report and recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.1. Defendant Pierre brings this motion to dismiss on the basis that the indictment filed against him in this Court violates his Fifth Amendment right against double jeopardy. In addition to this suit, Pierre has been indicted on 13 counts in the Southern District of Florida. The Florida trial is scheduled for October 15; the trial in this case is scheduled for December 16. *See* ECF No. 114. As acknowledged by both parties, this motion is not ripe. ECF No. 65 and 116. Because neither trial has begun, any argument Defendant wishes to make about the constitutionality of being tried twice for the same conduct is premature.

IV. RECOMMENDATION

Based upon the foregoing, and all the files, records and proceedings herein, **IT IS HEREBY RECOMMENDED** that Defendant's motion to dismiss [ECF No. 65] should be **DENIED without prejudice.**

DATED: October 10, 2013

s/Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before October 25, 2013, written objections that specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within fourteen (14) days after service thereof. All briefs filed under the rules shall be limited to 3,500 words. A judge shall make a de novo determination of those portions to which objection is made.

Unless the parties are prepared to stipulate that the District Court is not required by 28 U.S.C. § 636 to review a transcript of the hearing in order to resolve all objections made to this Report and Recommendation, the party making the objections shall timely order and cause to be filed by October 25, 2013 a complete transcript of the hearing.

This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.